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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FOUR

THE PEOPLE,

Plaintiff and Respondent,

v.

EUGENE V. DENMAN,

Defendant and Appellant.

B201923

(Los Angeles County  
Super. Ct. No. TA081908)

APPEAL from an order of the Superior Court of Los Angeles County,  
Paul A. Bacigalupo, John T. Doyle, Judges. Affirmed.

Marylou Hillberg, under appointment by the Court of Appeal, for Defendant and  
Appellant.

No appearance for Plaintiff and Respondent.

On February 7, 2006, appellant pled guilty to one count of corporal injury to a spouse, cohabitant or child's parent. (Pen. Code, § 273.5, subd. (a).) Imposition of sentence was suspended and he was placed on formal probation for five years on certain terms and conditions. He was given credit for time served, a total of 143 days. Pursuant to the negotiated plea, one count of making a criminal threat (Pen. Code, § 422) and two counts of assault with a deadly weapon (Pen. Code, § 245, subd. (a)(1)) were dismissed.

Prior to his guilty plea, appellant's *Marsden*<sup>1</sup> motion was denied and his motion to proceed in pro per was granted.

On June 12, 2007, appellant filed in superior court a writ of *coram nobis* asserting his guilty plea had been coerced and that he had a good and meritorious defense to the charges. On that date, he also filed a request for temporary stay.

On June 18, 2007, appellant filed a notice of appeal.<sup>2</sup>

On July 10, 2007, at the hearing on the writ of *coram nobis*, appellant asserted that a false police report had been filed and that his plea bargain was involuntary because rioting in the jail had caused him to fear for his life. He asserted his trial was unlawfully delayed, as was the preliminary hearing. He also claimed the victim of the offenses had written a declaration clearing him of all charges, but that the prosecutor had not "turn[ed] that information in."<sup>3</sup> Appellant also claimed that when the court went off the record the court "went out of [its] judicial role when [it] plea bargained [him]." The court responded it had "simply talked to [appellant] about the merits of the case" and had asked

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<sup>1</sup> *People v. Marsden* (1970) 2 Cal.3d 118.

<sup>2</sup> While the notice of appeal was prematurely filed, we treat it as filed immediately after the order denying the writ. (Cal. Rules of Court, rule 8.308(c).)

<sup>3</sup> The prosecutor responded that she had provided defense counsel with a letter from the victim. The court noted that as defense counsel had made reference to the letter during the preliminary hearing, there was no discovery violation.

appellant's permission to go off the record. Appellant also complained of the court's ruling to deny "co[ ]counsel, co advisor [*sic*]."

The trial court denied appellant's writ of *coram nobis* citing *People v. Goodrum* (1991) 228 Cal.App.3d 397 as the controlling case and denied his writ of supersedeas in light of the fact that the writ of *coram nobis* had been denied.

After review of the record, appellant's court-appointed counsel filed an opening brief requesting this court to independently review the record pursuant to the holding of *People v. Wende* (1979) 25 Cal.3d 436, 441.

On April 15, 2008, we advised appellant that he had 30 days within which to personally submit any contentions or issues which he wished us to consider. On August 5, 2008, he filed a request to augment the record and for an extension of time to file a supplemental brief. The order denying the request was filed August 7, 2008.

On September 2, 2008, appellant's August 28, 2008 motion for extension of time to file a supplemental brief was granted to October 2, 2008.

On August 28, 2008, appellant's court-appointed counsel filed a letter addressed to this court indicating that at the time she filed the *Wende* brief in this case she sent the record in her possession to appellant at the address he had provided her.

On September 8, 2008, appellant filed a supplemental brief asserting he was denied due process, had been illegally detained, falsely imprisoned, and coerced to involuntarily plead guilty. He additionally asserted there was a judicial abuse of authority, prosecutorial misconduct, a violation of his bill of rights, a violation of his *Faretta*<sup>4</sup> rights, a *Brady*<sup>5</sup> violation and ineffective assistance of counsel on appeal.

On September 23, 2008, he filed a declaration of Evette M. Baker that she was the alleged victim of the spousal battery and that on the day of the preliminary hearing, she

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<sup>4</sup> *Faretta v. California* (1975) 422 U.S. 806.

<sup>5</sup> *Brady v. Maryland* (1963) 373 U.S. 83.

gave the deputy district attorney handling the case a declaration stating appellant had not committed the offenses of which he was charged.

We have examined the entire record and are satisfied that no arguable issues exist. “A writ of error *coram nobis* is reviewed under the standard of abuse of discretion. [Citation.]’ [Citation.] ‘A writ of *coram nobis* permits the court which rendered judgment “to reconsider it and give relief from errors of fact.” [Citation.] The writ will properly issue only when the petitioner can establish three elements: (1) that some fact existed which, without his fault or negligence, was not presented to the court at the trial and which would have prevented the rendition of the judgment; (2) that the new evidence does not go to the merits of the issues of fact determined at trial; and (3) that he did not know nor could he have, with due diligence, discovered the facts upon which he relies any sooner than the point at which he petitions for the writ. [Citations.]’ [Citation.] “The writ lies to correct only errors of fact as distinguished from errors of law. [Citation.]” [Citation.]’ [Citation.]” (*People v. McElwee* (2005) 128 Cal.App.4th 1348, 1352.) The trial court did not abuse its discretion in denying the writ of *coram nobis*.

Appellant has, by virtue of counsel’s compliance with the *Wende* procedure and our review of the record, received adequate and effective appellate review of the judgment entered against him in this case. (*Smith v. Robbins* (2000) 528 U.S. 259, 278; *People v. Kelly* (2006) 40 Cal.4th 106, 112-113.)

**DISPOSITION**

The order appealed from is affirmed.

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MANELLA, J.

We concur:

WILLHITE, Acting P.J.

SUZUKAWA, J.